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D.B. INCOME TAX APPEAL NO.144/2006.
[COMMISSIONER OF INCOME TAX, BIKANER VS. M/S V.D.Motors PVT. LTD.]

DATED : 04.01.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. CHATRA RAM JAT, J.

Mr.K.K.Bissa for appellant.

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Heard learned counsel for the appellant.

We are satisfied that no question of law much less substantial question of law arises for consideration in this appeal. The Tribunal has found that the income of the assessee assessed for the Assessment Year 2000-2001 by the Commissioner of Income Tax in exercise of his power under Section 263 of the Income Tax Act, 1961 considered that in certain matters referred to in the order certain specific inquiries were not held or concluded, that the order passed by the Assessing Officer was erroneous and prejudicial to the interest of revenue and set aside the order of the assessment. He directed the Assessing Officer to make a fresh assessment after holding detailed inquiry.

On appeal, the Tribunal found that in all matters pointed out by the CIT, the Assessing Officer did hold detailed

inquiries, the CIT had not found in what manner any of the findings recorded by the Assessing Officer is erroneous. Merely on basis of assumption that because of some specific inquiry has not been made the conclusion that order is erroneous cannot be sustained.

We are in agreement with the learned Tribunal that the order of the CIT does not reveal how and in what manner the order of Assessing Officer was erroneous except making general observation about certain inquiries ought to have been made, without even arriving at any conclusion that because such inquiry has not been made any error has crept into the order? He has not himself cared to make any inquiry in the areas referred to in the order at least to find prima facie that inquiry in that manner, if made, would have led to different result.

Since, objecting opinion that assessment was erroneous is necessary pre-condition for exercise of power under Section 263, was not in existence, the order of revision has rightly been set aside by the Tribunal.

We may observe that the order of the Tribunal an inadvertent passing remark has been made that the order is not erroneous but may be prejudicial to the interest of the revenue was

uncalled for. There is nothing to suggest that the order of the Assessing Officer was prejudicial to the interest of Revenue in any manner. Such finding cannot be based on any presumption or assumption on surmises.

The appeal is dismissed in liminme.

[CHATRA RAM JAT], J. **[RAJESH BALIA], J.**

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